

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SHIRLEY L. PHELPS-ROPER,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:09-CV-1299
)	
CITY OF PEVELY, MISSOURI,)	
)	
Defendant.)	

MOTION TO FILE ANSWER OUT OF TIME

COMES NOW Defendant, by counsel, and for its Motion To File Answer Out of Time, states as follows:

1. Defendant's Answer and Response to Plaintiff's Complaint was due to be filed on or before September 14, 2009.
2. Defendant's counsel obtained permission from Plaintiff's counsel by telephone on September 14, 2009, to file its Answer one (1) day late, being September 15, 2009.
3. Defendant's counsel attempted to file its Answer on September 15, 2009, but was unsuccessful after four (4) separate attempts utilizing ECMF, the last such failed attempt being approximately 8:00 p.m.
4. Immediately thereafter, Defendant's counsel transmitted service copy to Plaintiff's counsel via fax machine. (Copy of fax transmission receipt attached hereto and incorporated by reference herein.)
5. Upon Defendant's counsel's contact with the Court's technical support staff September 16, 2009, staff assisted in commencing and completing the filing of Defendant's Counsel's Entry of Appearance and Answer and Responses of Defendant to

the Complaint of Plaintiff, all with telephone notice to Plaintiff's counsel and no objection from Plaintiff's counsel.

6. Upon Defendant's counsel contacting the Court, and advising of the late filing, one of the Court's case assistants advised Defendant's counsel the Court would withdraw the Court's Order of Default without further pleading from Defendant. Approximately one (1) hour thereafter another case assistant of the Court directed Defendant's counsel to file this Motion.

WHEREFORE, Defendant prays the Order entered by the Court September 16, 2009, be set aside; that the Court accept Defendant's counsel's Entry of Appearance and Answer filed September 16, 2009, for the reasons stated herein; and for such other relief as the Court may deem just and proper.

SHEPHERD TAYLOR KORUM & CURTIS, LLP

By: /s/ David M. Korum
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 18th day of September, 2009, he did file the above and foregoing document with the Clerk of the United States District Court in and for said District and Division, to be served by operation of the Clerk's electronic filing system upon the following:

Anthony E. Rothert
American Civil Liberties Union of Eastern Missouri
454 Whittier Street
St. Louis, MO 63108

/s/ David M. Korum
David M. Korum Reg. No. 14580